for The Defense

The Training Newsletter for the
Maricopa County Public Defender's Office

Volume 2, Issue 4 -- April 1992

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Contents:

RELEASE CREDITS: Are Clients Getting Credit?

Advice On Mandatory Minimum Sentences

1990 amendments to A.R.S. Section 41-1604.06 significantly affect the advice that defense attorneys give their clients about earning release credits for certain offenses. A.R.S. Section 41-1604.06 establishes parole eligibility guidelines and determines whether release credits will be earned. A.R.S. 41-1604.06(A) establishes two classes of parole eligibility, class one and class two.

A.R.S. Section 41-1604.06(C) was amended in 1990 to provide that "a person sentenced pursuant to a statute which requires . . . a person serve a mandatory minimum term shall not be placed in class one". The amendment became effective September 27, 1990.

Under A.R.S. Section 41-1604.07, clients classified in class one can earn release credits as normally described in most sentencing charts in the office. For example, a first offender sentenced for a non-dangerous felony can earn one day release credit for every two days served.

The practical effect of the 1990 amendment, however, is that repetitive and dangerous offenders sentenced pursuant to A.R.S. Section 13-604 (not eligible for release on any basis except as specifically authorized by A.R.S. Section 31-233(A) or (B) until not less than one-half or two-thirds of the sentence imposed by the court has been served) are not eligible to be placed in parole class one and therefore cannot earn release credits pursuant to A.R.S. 41-1604.07.Since clients cannot earn release credits, they will not be released early under A.R.S. Section 41-1604.07(D) if they are denied parole.

The above provisions do not affect the calculation of an individual's parole date. Parole release dates remain at one-half or two-thirds of the sentence imposed depending on the offense for which the client is sent to DOC.

The sentencing charts presently being used in our office are **incorrect** in that they suggest that the earning of release credits at the rate of one day for each two days served or one day for each three days served is possible if serving a sentence as a dangerous or repetitive offender. This no longer appears to be true and DOC has confirmed this information for purposes of this article. Where a dangerous or repetitive sentence is involved, defense attorneys may want to cross out that portion of the sentencing chart that indicates that the client **"[m]ay earn release credits at the rate of 1 day for each 2 days served" or "1 day for each 3 days served".**

DUI Sentences Have A Mandatory Minimum Term

The amendments to A.R.S. Section 41-1604.06(C) affect DUI sentences. DUI sentences require a mandatory minimum term of six months. Because of this mandatory minimum, clients sentenced for DUI offenses cannot be placed in class one for purposes of parole eligibility. Since DUI offenders are not placed in class one, they cannot earn release credits. Like the discussion above, however, clients may still be eligible for parole consideration after serving the mandatory portion of the sentenced imposed.

(cont. on pg. 2)

Advice on Earned Release Credits

Defense attorneys may want to be extremely cautious about advising clients about earned release credits. The many different codes, amendments and practices by DOC make predicting accurately how DOC will calculate a client's sentence hard to forecast. While terms like "soft" and "hard-time" are commonly used, they may mean very different things to defense counsel than they do to clients. Clients may easily confuse parole eligibility and earned release issues. This confusion to clients often leaves them embittered when they feel they were erroneously advised by their lawyer or the court about the nature of their sentence.

Generally, defense attorneys should keep in mind that dangerous and repetitive sentences cannot earn release credits. Additionally, defense attorneys, when advising clients, need to emphasize that parole eligibility and an earned credit release are two different forms of early release from DOC.

Obtaining Information

If you need to obtain information about an unusually complicated sentence, you can contact DOC. In the near future, the office will offer in-house training on sentencing. Additionally, several of the office's appellate attorneys are very knowledgeable about sentencing issues. **CJ ^**

FOR THE DEFENSE

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FOR THE DEFENSE is the monthly training newsletter published by the Maricopa County Public Defender's Office, Dean Trebesch, Public Defender. **FOR THE DEFENSE** is published for the use of public defenders to convey information to enhance representation of our clients. Any opinions expressed are those of the authors and not necessarily representative of the Maricopa County Public Defender's Office. Articles and training information are welcome and must be submitted to the editor by the 10th of each month.

Editor's Note: The preceding article was prepared with the assistance of Charles Krull from our Appellate Division. Given how DOC is presently interpreting the 1990 amendments, earning release credits appears to be for a very limited number of clients. Basically, with a few possible exceptions, only first-time, non-dangerous clients sentenced without any special sentencing provision (e.g., felony DUI has a special sentencing provision) will earn release credits as described in the present version of our sentencing chart.

Prosecutors Meet the Brady Bunch: Undiscoverable Discovery

Over and over again, newspaper headlines document stories of prosecutors that have hidden, destroyed or lied about evidence favorable to our clients. In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Supreme Court held that the prosecutor's suppression of requested evidence favorable to the accused violates due process when the evidence is material to either guilt or punishment, irrespective of the good faith or bad faith of the prosecution.

Over the years the United States Supreme Court has both narrowed and clarified the rule of Brady. For example, in U.S. v. Agurs, 427 U.S. 97 (1976), the Court narrowed the definition of what evidence is material, while in U.S. v. Bagley, 473 U.S. 667 (1985), the Court held that Brady requests apply to impeachment evidence just as much as to exculpatory evidence.

Brady In Arizona

In Arizona Brady is codified in Rule 15.1, Ariz. R. Crim. P. Rule 15.1(a)(7) provides that the prosecutor must give defense counsel "**[a]ll material or information which tends to mitigate or negate [our client's] guilt as to the offense charged, or which would tend to reduce his punishment . . . including all prior felony convictions of witnesses whom the prosecutor expects to call at trial**". In addition, practitioners may also rely upon Rule 26.8(b), requiring that the "prosecutor shall disclose any information in his possession or control, not already disclosed, which would tend to reduce the punishment to be imposed . . . prior to sentencing".

As with federal case law, Arizona appellate courts have held that due process is violated when prosecutors suppress evidence favorable to our clients that would affect the jury's determination. See State v. Jessen, 130 Ariz. 1, 633 P.2d 410 (1981). The test for a Brady violation is whether the **undisclosed** material would have created a reasonable doubt had it been presented to the jury. Id.

(cont. on pg. 3)

In Arizona, the disclosure of favorable evidence is required even if the defendant does not request it. See State v. Jones, 120 Ariz. 556, 587 P.2d 742 (1978). However, the better practice is to specifically request all Brady information on federal and state grounds since this undercuts any good faith argument by the prosecutor and puts them on clear notice of the requested material. Moreover, you are insuring that state and federal grounds are preserved for appeal should Arizona cut back on its more protective Brady rule. Time permitting, an additional motion prior to trial will further make the record that every effort has been made by defense counsel to obtain exculpatory material within the state's control.

Failure of the prosecutor to divulge Brady material may result in various sanctions including a mistrial and possible dismissal for prosecutorial misconduct. A client may also obtain a new trial if the evidence which the prosecutor failed to disclose is material. State v. Schreider, 115 Ariz. 555, 566 P.2d 1031 (1977). Materiality is defined as evidence that might lead the jury to entertain a reasonable doubt about our client's guilt or nondisclosure of evidence that may prejudice the defense. In addition, the undisclosed evidence may have to have been admissible at trial. See State v. Wilder, 22 Ariz. App. 541, 529 P.2d 253 (1974), cert. denied, 423 U.S. 843, 96 S.Ct. 78, 46 L.Ed.2d 64 (1975).

Examples of Brady Violations

Brady violations are as unique as the facts in your case. Like all case analysis, the facts may be determinative of whether evidence or information is of a material nature in a particular case.

Misleading Testimony

In People v. Cwilka, 386 N.E.2d 1070 (1979), the prosecutor did not produce letters between his office and the parole board indicating an agreement with a state's witness. The conviction was reversed on the basis of Brady. In People v. Westmoreland, 129 Cal. Rptr. 554 (1976), the prosecutor failed to disclose a witness's "deal" with his office. The court decided that this constituted misconduct by the prosecutor for not correcting misleading testimony and fell under the rule of Brady.

Identifications

In McDowel v. Dixon, 858 F.2d 945 (4th Cir. 1988), a witness first said the assailant was white, although defendant was black. The prosecutor failed to reveal the prior misidentifications. Also, in People v. Wright, 480 N.Y.S.2d 259 (Sup. Ct. 1984), the sole witness for the state made an uncertain identification; however, the grand jury was never informed of this fact. The indictment was dismissed on appeal.

Reports

In Carter v. Rafferty, 826 F.2d 1299 (3rd Cir. 1987), the court found that a suppressed lie detector report indicating that the state's star witness was untruthful was a Brady violation. Also, the failure to provide a police work sheet showing that a ballistics test revealed an inoperable weapon supposedly used by the defendant was a Brady violation. Additionally, failure to inform defense of a blood test indicating BAC that would mitigate intent has been held to be exculpatory in Pennington v. Commonwealth, 577 S.W.2d 19 (Ky.Ct.App. 1984), and a CPS report indicating that no sexual abuse had occurred was ruled exculpatory in O'Rarden v. State, 777 S.W. 455 (Tex. Ct. App. 1989).

Criminal Records

In Ex rel. Ferguson, 5 Cal. 3d 524 (1971), the prosecutor failed to provide the accused with copies of the police record of an alleged victim which included felony convictions and commitments to state hospitals for sex offenses.

Other

Other areas that have supported claims of Brady violations include, failure to disclose that witness was target of a separate investigation by the prosecutor (Moynhan v. Manson, 419 F.Supp. 1139 (1976)), failure to inform the defense about a key witness altogether (Collins v. State, 642 S.W.2d 80 (Tex. Ct. App. 1982)), and in People v. Wallert, 469 N.Y.S.2d 722 (App. Div. 1983), the failure to inform the accused that the alleged victim had a civil lawsuit on same facts pending before the court.

Conclusion

Brady issues can be a powerful weapon for our clients; it applies to prosecutors as well as the police. Brady may be particularly useful as a tool if defense counsel obtains information from alleged victims on the stand who testify about exculpatory evidence, (since a pretrial interview may have been denied). The Training Division has available an outline of Charles Fels' "Brady Motion: A Sword and a Shield for Alert Defense Counsel". It is an excellent starting point for any pre- or post-trial motion documenting Brady violations by the prosecution. **CJ ^**

Streamlined Procedures for Obtaining Records Under A.R.S. Section 41-1959 Implemented by Superior Court

Superior Court Judge Jeffrey Hotham has been instrumental in working out an agreement with the Child Welfare Division of the Arizona Attorney General's Office and the Sex Crimes Division of the Maricopa County Attorney's Office.

In many sex crime cases it is necessary for defense counsel to request Child Protective Services' documents relating to previous abuse or molestation allegations. This information may bear upon the alleged victim's fabrication of sexual or physical abuse claims or account for detailed knowledge about sexual issues obtained from prior incidents of abuse. Hence, CPS records may be critical in such cases to assess the alleged victim's credibility.

(cont. on pg. 4)

This discovery takes on even more importance now that pretrial interviews may be refused by alleged victims or their representatives under Victims' Bill of Rights legislation.

Typically, when such records are requested, the Attorney General's Office files a motion for a protective order based upon its obligations imposed upon the state in A.R.S. Section 41-1959 regarding the permissible disclosure of CPS records. This often requires an in camera inspection and can be a lengthy and time-consuming process in order to obtain necessary discovery for our clients.

As of this month, however, according to an agreement coordinated by Judge Hotham with the Attorney General's Office and the Maricopa County Attorney's Office, deputy county attorneys will routinely in child sex crime cases file a motion for disclosure and proposed order. The order will comply with A.R.S. Section 41-1959 and will state that CPS counsel has no objection to the disclosure. The superior court will review and sign the order without a hearing. Upon receipt of the court order, CPS will reproduce the records and deliver them to the county attorney, who will then, **without request**, forward a copy to defense counsel.

The purpose of the new procedure will be to eliminate the need for an in camera inspection and hearing. Under the new procedure, even if defense counsel moves for the production of the documents, the county attorney's proposed order will serve as a response making further objection from the Attorney General's Office unnecessary.

CJ ^

Request to Perform Arithmetic Calculations and Responses Held to be Inadmissible: Can You Count on Pennsylvania v. Muniz to Help Your DUI Case?

Even in the bad sometimes there is good. One example is the recent case of Pennsylvania v. Muniz, 110 S.Ct. 2638 (1990). Even though Muniz continues to narrow Miranda's protections, the court ruled in one part of the opinion that a question requiring a suspect to perform arithmetic calculations constituted an attempt to elicit incriminating testimonial evidence. Hence, a response by an accused indicating that he could not calculate a certain date was held inadmissible at trial (the good news).

The bad news is that the court also ruled that the Fifth Amendment prohibition against self-incrimination, as interpreted in Miranda, did not preclude introducing a videotape of a DUI suspect performing field sobriety tests even though he had not been Mirandized. This, however, is in accordance with the present trend of the Supreme Court in limiting Miranda.

How Can Muniz Help Your DUI Case?

Background

The plurality in Muniz concluded that the defendant's responses to routine booking questions while in custody were testimonial. However, they also ruled that these questions fell within the "routine booking questions" exception that exempts from Miranda's coverage any routine questions to secure biographical information. (Nothing, of course, in reality was routine about what was done since the suspect was being video-taped specifically for use against him in his DUI trial.)

One of the questions asked of Mr. Muniz was, "What is the date of your sixth birthday?" The government argued that this question was designed to make an inference about the physiological functioning of Mr. Muniz's brain and therefore was physical evidence (and hence not testimonial). The Supreme Court rejected this analysis and said, in effect, that whether evidence is physical or testimonial does not depend upon the ultimate fact, but on **the method by which it is obtained**. The Court noted that in Schmerber v. California it ruled blood could be taken because it was not a testimonial act. However, if in Schmerber the police had asked the accused if his BAC was high, that would be a testimonial act and hence inadmissible if not Mirandized.

Citing several other cases, the Muniz court then went on to quote Wigmore for the proposition that "[u]nless some attempt is made to secure a communication -- written, oral, or otherwise -- upon which reliance is to be placed as involving [the accused's] consciousness of the facts and the operations of his mind in expressing it, the demand made upon him is not a testimonial one".

The court then reasoned that the question regarding the date of Muniz's sixth birthday called for a testimonial response. When Muniz was asked to calculate the date of his sixth birthday, he was left with the choice of answering truthfully (i.e., stating that he was incapable of calculating the requested information and hence incriminating himself), or delivering a response that was not truthful and thereby incriminating himself. Hence, the Supreme Court reasoned that this response should have been suppressed.

Rhomberg - Modified

Practitioners may be able to apply the Supreme Court's logic to such DUI field tests as the Rhomberg - Modified. This field sobriety test requires that a suspect communicate an oral response and forces him to express either the alphabet or some numerical recitation. Usually the counting is the backward "calculation" of numbers.

The Rhomberg - Modified seems to be exactly the type of un-Mirandized field test that the Supreme Court has condemned in Muniz because of its testimonial nature. Where evidence is extremely damaging on this issue, defense counsel may want to file a motion based on Muniz to exclude this field test and hence there will be one less damaging piece of information that a jury may inappropriately rely upon for a determination of guilt.

(cont. on pg. 5)

Other Facts

Additionally, there may be several other scenarios where a suspect has been asked questions that require some type of calculation or where the police are really trying to trick the suspect into incriminating himself. As defense attorneys know, police officers are aware that their words and actions can elicit incriminating statements from our clients. Hence, there may often be fact patterns where the responses required from the accused were designed to obtain incriminating statements through the "operations of his mind . . .." If the police use a technique to try to get at the calculations or consciousness of information by the accused, defense counsel may want to use the logic of Muniz to attack the incriminating information elicited without the benefit of Miranda warnings.

Conclusion

While in general the Muniz decision continues to undermine our clients' rights, the Sixth Birthday Question may provide some bases for defense counsel to attack the routine trickery used by law enforcement to obtain incriminating statements from our clients without the benefit of at least a recitation of their right to remain silent. **CJ^**

Can Courts Limit Your Cross-Examination on a Witness's True Name and Address?

Defense Counsel: Is James Jordan your correct name?

Prosecutor: Objection.

Defense Counsel: I have the right to know if it is his correct name.

THE COURT: He may answer if it is his correct name or not.

Answer: No, it is not.

Defense Counsel: What is your correct name?

Prosecutor: Objection.

THE COURT: I won't have him answer that.

Defense Counsel: Now, where do you currently live?

Prosecutor: Objection.

Defense Counsel: This is material.

Prosecutor: Objection, Judge.

THE COURT: Yes, objection allowed.

The above rulings of the trial court were overruled by the United States Supreme Court. Our clients have a constitutional right to confront the witnesses against them and it is essential to a fair trial that wide latitude be given defense counsel to cross-examine. According to the United States Supreme Court in Smith v. Illinois, 390 U.S. 129 (1967), latitude in cross-examination is constitutionally required even where counsel cannot articulate to the court what facts a reasonable cross-examination might develop. Id. at 131.

As Justice Stewart wrote in Smith in reversing the conviction where cross-examination of an informer was limited:

"In the present case there was not, to be sure, a complete denial of all rights of cross-examination. But the petitioner was denied the right to ask the principal prosecutor witness either his name or where he lived, although the witness admitted that the name he had first given was false. Yet when the credibility of a witness is in issue, the very starting point in exposing falsehood and bringing out the truth through cross-examination must necessarily be to ask the witness who he is and where he lives. The witness' name and address open countless avenues of in-court examination and out-of-court investigation. To forbid this most rudimentary inquiry at the threshold is effectively to emasculate the right of cross-examination itself." Id. at 131.

"Cross-examination of a witness is a matter of right." Alford v. United States, 282 U.S. 687 (1931). Cross-examination is the essence of the confrontation clauses of the United States and Arizona Constitutions.

Does The Victims' Rights Implementation Act & Rule 39 Violate The Right To Cross-Examination?

Although the privacy portions have been repealed, the Victims' Rights Implementation Act (A.R.S. Section 13-4434C) previously provided a statutory right for victims to refuse any locating information, including home or work addresses. This applied even during the trial of the case. Rule 39, Ariz. R. Crim. P., also purports to give a victim the right to refuse to give their address in any pretrial interview and "other proceedings". In other words, during trial.

Both of these provisions appear to be blatantly unconstitutional in view of current case law. Practitioners should note that no such requirement to refuse to give "locating" information is in the so-called Victims' Bill of Rights (art. 2, section 2.1, Ariz. Const.).

Practitioners may want to consider a pretrial motion to litigate this issue or simply include those questions as part of cross-examination. Obviously, in the case of alleged victims the issue of whether they have used other names is of utmost importance and may lead to other information, even during trial, bearing on the witnesses' credibility. Likewise, our clients deserve to have the environment in which a victim-witness lives as part of our cross-examination. Anything less denies our client effective cross-examination and hence the right to confront the witnesses against them under the United States Constitution and art. 2, sections 4 and 24 of the Arizona Constitution.

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If the prosecutor objects during trial, citation to authority may convince the trial court of the necessity for your cross-examination questions on the names and work or home address of an alleged victim. Hence, keeping a copy of Smith v. Illinois as part of your trial notebook as a matter of course may be useful.

If citation to the United States Supreme Court does not help, and the judge asks the relevance of your questions, explain to the judge these issues go to the credibility of the alleged victim and that you have a right to cross-examine and place alleged victims in their proper setting as witnesses. If that does not do it, make a record. Be sure that the record reflects that you are being prevented from exercising your client's right to confront the witnesses against him and have effective cross-examination under the Arizona and United States Constitutions.

Is There a Downside?

Maybe -- but more often than not, there will not be. In most cases the jurors should wonder what it is that the government is trying so hard to hide? Moreover, you may learn a great deal of information that you did not previously know and that may lead to a trial break in the case.

What About Police Officers?

Can you ask a police officer his home address? Alford and Smith may, in appropriate cases, give you the authority to illicit a peace officer's home address as well. Remember here, however, that courts have made a limited exception for the personal safety of witnesses. Asking this question may require you to be able to show the relevance. Since current case law is narrowing every constitutional right, trial courts will probably give less latitude in this area.

Copies of Smith v. Illinois are available from the Training Division. **CJ ^**

PRACTICE TIPS:

CSAAS Update

Last month for the Defense ran an article on "Attacking the Child Sexual Abuse Accommodation Syndrome (CSAAS). Among other issues, the article suggested that CSAAS was subject to attack on Frye grounds. Roland Steinle, at our Mesa office, provided for the Defense a summary of a recent Pennsylvania Supreme Court case where defense counsel used that argument and won.

In Pennsylvania v. Dunkle, Pa. Sup. Ct. No. 32 M.D., Appeal Docket 1990, filed January 22, 1992, the Pennsylvania Supreme Court noted that no "classical" or typical profile for sexually abused children has been sufficiently established in the field of psychology. In fact, the court opined, the available scientific evidence indicates that sexually abused children behave in many different ways. Further, the court observed that allowing a jury to speculate that particular behaviors indicate sexual abuse violates notions of relevance and probativeness. The court further noted that some of the so-called expert's testimony, such as generalized recitation of why an abuse victim would delay reporting the incident or be unable to remember particular dates and times, concerned matters that an average juror could grasp without the aid of an expert. The expert's testimony therefore amounted to no more than an improper bolstering of the alleged victim's credibility.

Discriminatory Peremptory Challenges

When making a Batson v. Kentucky or its Arizona equivalent State v. Superior Court (Gardner) motion because the state made discriminatory peremptory challenges of jurors (for example, struck all African- or Mexican-American jurors), you must make a sufficient record. You should not only challenge the prosecutor's reason for the strike, but also introduce any evidence to show that the state's challenge is unsubstantiated and incorrect. One excellent source is the slips containing the biographical information of the jurors. These may contain information about their place of work, number of children, education, race or ethnic origin, as well as other crucial data to substantiate your client's claim. Try having the slips marked as defense exhibits and entered into the record.

Plea Agreements

If the state deviates from an oral representation for sentencing, practitioners must make a record. In State v. Georgeoff, 163 Ariz. 434, 788 P.2d 1185 (1990), it was held to be a breach of the plea agreement for a prosecutor to renege on his agreement to recommend probation. Failure to object will waive the issue for appeal.

Prosecutorial Vouching in Closing Argument

A frequent problem in closing arguments is impermissible prosecutorial vouching. Defense counsel should object immediately, make a record and, if appropriate, move for a mistrial. There are two kinds of prosecutorial vouching to which defense counsel should be sensitive. First, when the prosecutor places the prestige of the government behind its witness and, second, where the prosecutor suggests that information not presented to the jury supports the witness's testimony. See State v. Vincent, 159 Ariz. 418, 768 P.2d 150 (1989). Further, lawyers are prohibited from asserting personal knowledge of facts in issue before a tribunal unless he or she testifies as a witness. State v. Salcido, 140 Ariz. 342, 681 P.2d 925 (1984). The test for reversible error is whether the prosecutor's closing argument brought to the attention of jurors matters they could not properly consider. State v. Snowden, 138 Ariz. 402, 675 P.2d 289 (1983).

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Editor's Note: The following motion may be a way to preserve the issue of the state's refusal to allow defense counsel to interview an alleged victim. It attacks the expanded legislative and court implemented rules granting alleged victims more protections than the Victims' Bill of Rights constitutional amendment. The motion is based upon work by the Editor and Thomas Murphy. Defense counsel may also want to review the Comment by Thomas B. Dixon, Arizona Criminal Procedure After the Victims' Bill of Rights Amendment: Implications of a Victim's Absolute Right to Refuse a Defendant's Discovery Request, Vol. 23, Ariz. St. L. J. (1992) and Marty Lieberman, Comment, Investigation of Facts in Preparation for Plea Bargaining, Ariz. St. L. J. (1981).

[SAMPLE VICTIMS' RIGHTS MOTION]

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

STATE OF ARIZONA,	)	
	)	No. CR *
Plaintiff,	)	
	)	**MOTION TO PERMIT DEFENSE COUNSEL TO**
v.	)	**CONTACT THE ALLEGED VICTIM AND TO**
	)	**DECLARE A.R.S. §13-4433(B) AND RULE**
WILL B. FREE,	)	**39(b)(11) UNCONSTITUTIONAL**
	)	
Defendant.	)	(Assigned to the Honorable
	)	Barry Fair)

Will B. Free moves the court for an order allowing his defense lawyer and agents to contact the alleged victim in this case. This motion is based upon Mr. Free's right to effective assistance of counsel, due process of law and the right to free speech.

The Victims' Bill of Rights, provided for in art. 2, §2.1, Ariz. Const., gives alleged victims of crime the right to refuse a defense interview. However, Ariz. Rev. Stat. Ann. (A.R.S.) §13-4433 and Rule 39(b)(11), Ariz. R. Crim. P., impermissibly require that all contact with victims be through the prosecutor. This violates the accused's right to counsel, due process of law and free speech provisions of the United States and Arizona Constitutions and exceeds the scope of the Victims' Bill of Rights. While an alleged victim may refuse to give defense counsel an interview, it is unconstitutional to prevent defense counsel from contacting alleged victims.

Rule 39 and A.R.S. §13-4433 are overbroad and unconstitutional on their face. The court should enter an order allowing defense counsel to contact the alleged victim or determine whether they will grant a defense interview and declare A.R.S. §13-4433(B) and Rule 39(b)(11) unconstitutional. This motion is further supported by the attached Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE
II. DISCUSSION AND ARGUMENT
A. A.R.S. §13-4433(B) And Rule 39(b)(11) Are Unconstitutionally Overbroad.

The Victims' Bill of Rights Amendment ("the Amendment"), enacted in 1990, provides alleged victims of crime with the right "[t]o refuse an interview, deposition, or other discovery request by the defendant, the defendant's attorney, or other person acting on behalf of the defendant". Ariz. Const. art. II, §2.1. Following its passage, the Arizona Legislature enacted A.R.S. §13-4433(B) and the Arizona Supreme Court amended Rule 39, Ariz. R. Crim. P., in order to effectuate this right by requiring that an accused attorney "shall only contact the victim through the prosecutor's office". A.R.S. §13-4433(B). Likewise, Rule 39, Ariz. R. Crim.

P., provides that "defense requests to interview the victim shall be communicated to the victim through the prosecutor". A statute is overbroad if it may reasonably be interpreted to prohibit conduct which is constitutionally protected and chills the constitutional rights of persons not before the court. See Matter of Pima Cty. Juv. App. No.74802-2 ("Matter of Pima Cty."), 164 Ariz. 25, 790 P.2d 723 (Ariz. 1990); see also, Secretary of State of Maryland v. Joseph H. Munson Co., Inc., 467 U.S. 947, 104 S.Ct. 2839, 81 L.Ed.2d 786 (1984). An overbroad statute is one which is invalid on its face, instead of as applied. Overbreadth challenges are allowed primarily to prevent chilling constitutional rights of persons not before the court, rather than to protect the rights of the litigant himself. Id. at U.S. 958, 104 S.Ct. 2847, 81 L.Ed.2d 796 (1984).

A.R.S. §13-4433(B) and Rule 39(b)(11) may reasonably be interpreted to prohibit conduct which is constitutionally protected and by which the legislature and court can achieve its goals without stifling fundamental liberties.

[Discussion and Examples, (1) prohibits telephone contact, (2) prohibits contact by mail, (3) prohibits contact by victims of defense counsel, (4) innocent conduct.]

B. The Accused Is Entitled to Have Access to Witnesses Even If No Interview Is Granted

Art. II, §6 of the Arizona Constitution provides that "[e]very person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right". The defense is entitled to speak or write to any prospective witness, including an alleged victim, even though it may not lead to an interview. The Victims' Bill of Rights was implemented so that alleged victims of crime would be "treated with fairness, respect and dignity and to be free from intimidation, harassment or abuse." Ariz. Const., art. II, §2.1. However, A.R.S. §13-4433 and Rule 39 treat any direct contact, written or spoken, by an accused's counsel as intimidation or harassment. It does not follow that the accused's counsel should be precluded from determining whether an alleged victim wishes to exercise their right to refuse an interview.

[Discussion]

C. A.R.S. §13-4433(B) and Rule 39(b)(11) Prevent the Accused From Having Effective Assistance of Counsel.

Precluding defense counsel from contacting alleged victims denies the accused effective assistance of counsel under the Sixth Amendment of the United States Constitution and art. II, §24 of the Arizona Constitution. Courts have found that the failure to interview prosecution trial witnesses is ineffective assistance of counsel. See e.g., Hines v. Enomoto, 658 F.2d 667 (9th Cir. 1981). As our Arizona Court of Appeals wrote in State v. Radjenovich, 138 Ariz. 270, 674 P.2d 333 (Ariz. App. 1983), "except in the most unusual circumstances, it offends basic notions of minimal competence of representation for defense counsel to fail to interview any state's witnesses prior to a major felony trial." Moreover, in State v. Draper, 162 Ariz. 433, 784 P.2d 259 (1989), our Arizona Supreme Court specifically recognized the "counsel's inability to interview the victim, before advising a client to enter a plea, may render counsel's assistance ineffective".

[Discussion]

III. CONCLUSION

This court should find that A.R.S. §13-4433(B) and Rule 39(b)(11) are unconstitutional and enter an order allowing defense counsel to directly contact the alleged victim in this case to see whether he will submit to a defense interview.

Dated this _____ day of *, 1992.

DEAN TREBESCH
Maricopa County Public Defender

By_____
*
Deputy Public Defender^

RAJI Mistake

If you are defending a sex offense where the alleged victim was a woman, there is a mistake in one of the RAJIs of which you may want to be aware. RAJI's Criminal Instruction No. 14.104 defines a woman's private parts as "the female genital area and rectum". The source is State v. Carter, 123 Ariz. 524, 601 P.2d 287 (1979). Carter instead defines it as the external genitalia and excretory organs. The inaccuracy in the RAJI is problematic when a defendant touched only the general vicinity of the genitals. The RAJI is overbroad by including genital "area", and you should ask for the exact definition approved in Carter.

Reasonable Doubt

Excerpt from "Creating Reasonable Doubt", Presentation by David Lewis at NORML's spring, 1991, Drug Defense Seminar, Aspen, Colorado.

What you want to do is give something to the jury that reassures them. One of the ways that we used to do it was to talk about things like the flag and reasonable doubt and presumption of innocence and all of that. Well, that's not working anymore. I mean it's like these are the great principles that our country was founded on and they don't want to hear about it. They're not listening to the drums and the bugles anymore; you can't hear them over the bombs and the gunfire, at least not in my neighborhood.

So what you want to do is give them something more, and what you want to do is basically terrify them. The only terror left is that they're getting the wrong people for the wrong things, and the one that I'm using now which I really like and commend to you is the following, and this is kind of rough.

In 1673 in Salem, Massachusetts, the town fathers got together, and believing they were doing the right thing with the law they had at that time, and believing that they were doing what they had to do to protect their community and the people who live in it, put to death 36 women as witches. And they did it through due process, as they understood it then. They did it through the rules they understood then.

A hundred years later in Philadelphia, Pennsylvania, the fathers of our country understood that what was done in Salem was wrong, the way it was done was wrong, that in fact protections were needed to keep people from being burned as witches or marked forever as criminals. And so they set about creating a system that was designed to protect everybody, and they created these ideas of presumption of innocence, of reasonable doubt, and they did it to try and wipe away the smell of the fires in Salem. And every time a jury sits in a box, one of the challenges that sits before them is whether or not they in their hearts, in their minds and in their consciences, can wipe away the burning fires of Salem. That's what these concepts are about. ^

TRAINING CALENDAR

May 09

AACJ presents "5th Annual Seminar on Aggressive Defense of the Accused Impaired Driver" in Tucson.

May 22

MCPD Office presents "DUI 1992: Defenses for Acquittal" at the Downtown Hyatt Regency with featured speaker Lawrence Taylor author of Drunk Driving Defense. Additional speakers will include: Debra Wisner of the DMV; defense attorneys Mark Williams and our own Gary Kula; as well as former prosecutor John Walker. Mr. Walker is now in private practice in Prescott. The seminar will cover new DUI issues and an extensive session by Lawrence Taylor on cross-examination of the arresting officers. All county public defenders may attend at no cost.

June 05

MCPD Office presents "Professional Responsibility for Criminal Lawyers". This ethics seminar will have several distinguished faculty members and will be presented at the Downtown Omni Adams Hotel (formerly the Sheraton).

June 12

The Maricopa County Attorney's Office is sponsoring "Making and Meeting Objections", a lunchtime seminar in the Board of Supervisors' Conference Room on the 10th Floor of the new Administration Building, 301 West Jefferson Street. The speaker will be the Honorable Joseph D. Howe. Public Defenders are welcome to attend. ^

TRAINING NOTES

CLE Requirements

Practitioners need to continue to stay aware that they must comply with MCLE. State Bar rules require that you must obtain 15 hours of CLE annually, of which 2 hours is in ethics. Our office has sponsored over 20 hours of CLE so far this year and sent attorneys to over 80 other in-state and out-of-state seminars for CLE credit. Additionally, the office has available a CLE audio-tape on ethics and several video-tapes that can be claimed for self-study CLE hours.

(cont. on pg. 10)

Upcoming Seminars

Two more CLE programs will also be offered in the near future. On May 22nd our office will sponsor DUI 1992: Defenses for Acquittal. The seminar will feature several outstanding DUI practitioners, including John Walker, Mark Williams, Gary Kula and Debra Wisner from the Motor Vehicle Division. Additionally, Lawrence Taylor from California will be our featured faculty member. Mr. Taylor is the author of Drunk Driving Defense and numerous other articles including three sections in American Jurisprudence: Proof of Facts, Second Edition.

Mr. Taylor is one of the preeminent authorities in the field and has been a District Attorney and Deputy Public Defender for Los Angeles.

The Maricopa County Public Defender's Office DUI 1992 seminar will be held at the Hyatt Regency and will have limited enrollment. Those interested in attending should sign-up early.

On June 5th our office will sponsor a criminal law ethics seminar at the Omni Adams Hotel (formerly the Downtown Sheraton).

Specialization Credit

Several Maricopa County Public Defender seminars, in addition to qualifying for CLE credit for MCLE, have also received approval for Criminal Law Specialist. Specialization credit requires submission of all materials for the seminar and the respective specialization committee's approval that it meets with standards for criminal law specialists. Seminars approved for specialists include: DUI 1991, Mitigation Evidence in Death Penalty Cases, Immigration Consequences of Criminal Convictions, and Sentencing in the 90's: The Need for Alternatives.

Planning for Upcoming Seminars

The office will offer several other in-house training events this year. In addition to sponsored CLE (open to all practitioners), the office has also presented several in-house training events. On February 28th, the office presented "Treatment of Sexual Offenders" in our own Training Facility.

The office plans to present a "Client Relations" seminar in late summer or early fall to address issues of client control and professionalism in practice. If you have a suggestion for a speaker or subject matter on the issue of client relations, please let the Training Director know. Additionally, if you have any suggestions for any other aspect of training, please contact the Training Director.

ARIZONA ADVANCED REPORTS

Volume 103

Knapp v. Martone
103 Ariz. Adv. Rep. 3, January 7, 1992 (S.Ct.)

Defendant was charged with the intentional murder of his two small children. As an alternative allegation, defendant was charged as an accessory; his co-conspirator was his wife. The wife was never charged with a crime.

The defendant sought to depose his wife as a potential defense witness. The wife objected to the deposition under the Victims' Bill of Rights. The trial judge overruled her objection and ordered her deposition, finding that she was not a victim within the definition of the Victims' Bill of Rights. As a parent of the dead children, the mother is a victim under the constitutional definition. She is not excluded from the Victims' Bill of Rights because she is not in custody and is not the accused. The language of the Victims' Bill of Rights is clear and ad hoc exceptions are not permitted. (See also dissent.)

State v. Bowles
103 Ariz. Adv. Rep. 61, January 9, 1992 (Div. 2)

Defendant pled guilty to aggravated assault with one prior while on parole. The plea agreement called for prison to run concurrently with a previous sentence but consecutive to the unexpired parole term. When orally pronouncing the sentence, the judge stated that this sentence be concurrent with any unexpired parole time. The later minute entry was consistent with the plea agreement and called for time consecutive to the unexpired parole term.

Defendant maintains that the minute entry is erroneous because the oral pronouncement controls when there is a discrepancy between the oral sentence and the written judgment. However, the record and the plea agreement clearly show that consecutive sentences were contemplated. The law in Arizona is that when there is a discrepancy between the oral pronouncement and the minute entry that cannot be resolved by a reference to the record, a remand for clarification of sentence is appropriate. On the record before the court, the judge intended that the sentence be consecutive rather than concurrent. The judgment and sentence as stated in the minute entry are affirmed. [Appeal presented by Alex Gonzalez, MCPD.]

(cont. on pg. 11)

State v. Garcia
103 Ariz. Adv. Rep. 24, December 24, 1991 (Div. 1)

Defendant was charged with conspiracy. Within two months the state moved to dismiss the charge. The judge ordered the case dismissed without prejudice, provided that after 90 days the dismissal would be with prejudice unless the state convinced the court that it should be otherwise. Before the 90 days was up, the state moved to extend the time for a dismissal with prejudice. The defendant replied that he was prejudiced by the state's actions. The hearing on the state's motion was heard after the 90 days had expired. The trial judge refused to grant the state's motion.

On appeal, the state argues that Rule 16.5(d) requires the judge to find a dismissal with prejudice is in the interest of justice. The state argues that the lack of this finding means that the dismissal was without prejudice. When the record reveals a sufficient reason for dismissal with prejudice, the court assumes that dismissal with prejudice is in the interest of justice, even if the order contains no such language. However, the record in this case does not disclose that the interests of justice required dismissal with prejudice and the trial judge abused his discretion. There is no record that the state was attempting to avoid the time limits of Rule 8 and the trial judge made no such finding. The trial judge abused his discretion in dismissing with prejudice. The court further notes that the automatic conversion of a dismissal without prejudice into a dismissal with prejudice violates Rule 16.5(d). Setting an arbitrary time limit in the absence of circumstances demonstrating some articulable prejudice is less that Rule 16.5(d) contemplates.

State v. Gilbert
103 Ariz. Adv. Rep. 22, December 24, 1991 (Div. 1)

Defendant was charged with conspiracy and fraudulent schemes. The trial judge granted the state's motion to dismiss without prejudice, but ruled that if the state did not recharge the defendant within 120 days, the dismissal would automatically become with prejudice. The trial judge found that the interests of the orderly administration of justice required some type of finality. The state objected to the dismissal with prejudice part of the order and appealed.

Defendant claims that the court has no jurisdiction to hear this case because the state may not appeal from its own motion to dismiss. The state may not appeal from its own motion to dismiss where the state was granted exactly what it requested. However, the state can appeal from an order to dismiss that goes beyond what the state requests. The state was aggrieved by the order and may appeal.

It was an abuse of discretion for the court to order that the dismissal without prejudice automatically convert to a dismissal with prejudice. Rule 16.5(d) requires a dismissal without prejudice unless the interests of justice require that the dismissal be with prejudice. The general need for finality is served by the statute of limitations and is insufficient to require dismissal with prejudice. The most important factor considered in whether dismissal should be with prejudice is whether the delay in the prosecution prejudices the defendant. Rule 16.5(d) requires a reason finding that the interests of justice required the dismissal to be with prejudice. The court criticizes the practice of setting arbitrary time limits in the absence of circumstances demonstrating prejudice. [Appeal presented by Garrett W. Simpson, MCPD.]

State v. Granados
103 Ariz. Adv. Rep. 26, December 24, 1991 (Div. 1)

Defendant was charged with sexual conduct with a minor. Before trial, the state moved to dismiss the charge without prejudice. The trial court granted the motion but gave the state 60 days to refile or the defendant could file a motion to dismiss with prejudice. At a later hearing, the court learned that the victim and her family were in Mexico and the state was not able to proceed with the prosecution. Over the state's objection, the trial judge dismissed the charge with prejudice.

The state appealed on the grounds that the court's order fails to comply with Rule 16.5(d) because it does not recite that the interests of justice require dismissal with prejudice. While the judge should expressly make such a finding, it can be presumed even in the absence of a record when a dismissal is with prejudice that the judge has considered the interests of justice.

The state also claims that the judge abused his discretion. The record discloses no reason why the interests of justice require dismissal with prejudice and the general desire for finality will not support dismissal with prejudice. The victim's leaving for Mexico, the partial recantation, and lack of interest in pursuing the prosecution does not justify a dismissal with prejudice. The court disapproves of automatically converting a dismissal without prejudice into one with prejudice by the mere lapse of an arbitrary period of time. [Appeal presented by Paul C. Klapper, MCPD.]

State v. Mendoza
103 Ariz. Adv. Rep. 8, January 7, 1992 (S.Ct.)

Defendant was stopped in 1988 for drunken driving. Defendant claimed that his jury trial was not held within the 150 days required by Hinson v. Coulter. The Supreme Court overrules Hinson finding the rule unnecessary, improper and counterproductive.

Defendant argues that overruling Hinson in his case constitutes an ex post facto violation. The court's holding is merely a judicial construction of a procedural rule and may be applied retroactively. Rule 8 is a procedural rule and a defendant has no vested right in any particular mode of procedure. The continuances granted in the defendant's case did not violate Rule 8. See also concurrence and dissent. [Presented on appeal by Stephen R. Collins, MCPD.]

(cont. on pg. 12)

State v. Petzoldt
103 Ariz. Adv. Rep. 63, December 31, 1991 (Div. 2)

Defendant was convicted of conspiracy and sale of marijuana. In 1984, the police broke up a major marijuana operation and arrested the operation's bookkeeper. The bookkeeper testified against the defendant at trial. Also admitted at trial were notebooks containing entries for sales to the defendant.

Defendant claims the notebooks should not have been admitted as business records. The notebooks were hearsay because they were offered to prove that marijuana transactions had occurred. Admission of the books under Rule 803(6) was proper because the bookkeeper testified that the records were entered contemporaneously by persons with knowledge. There was also a regular practice of keeping the notebooks, even though different sizes were used. The notebooks had sufficient indicia of trustworthiness because of the bookkeeping procedures used. The fact that the writers may have used cocaine does not render them unreliable. They are also not unreliable even though not all the writers can now be identified.

Defendant further claims that admission of the notebooks denied him his right to confrontation under the United States Constitution. Firmly rooted hearsay exceptions do not violate the confrontation clause. While the defendant also invokes the Arizona Constitution, he failed to argue why our constitution should be analyzed differently and has abandoned that claim.

Defendant also claims that the notebooks were the only evidence of the actual crime and were unduly prejudicial. The notebooks were not the only evidence of possession of marijuana for sale by defendant. The notebooks were also not unduly prejudicial.

Defendant was also convicted of conducting an illegal enterprise, though he was merely a customer. A person illegally conducts an enterprise if that person is employed or associated with any enterprise. Customers are associated with an enterprise and can be convicted of conducting that criminal enterprise.

Defendant claims that hearsay testimony linking him to a particular house was improperly admitted. The court agrees but finds that the error is harmless because of the overwhelming amount of other evidence presented against defendant.

Defendant moved to dismiss for preindictment delay because he was not tried until 1990 for offenses committed in 1983 and revealed in 1984. Defendant claims that witnesses were lost in the interim. A defendant must show that the delay was intended to gain a tactical advantage or to harass him and that the delay caused prejudice. Defendant does not argue any motivation to harass him. A general unavailability of witness without a showing of what exculpatory evidence they would present is insufficient to show prejudice.

Defendant claims that the trial court erred in classifying the conspiracy as a class 2 felony. At the time defendant committed his offenses, the underlying offenses were class 2 felonies. The degree of conspiracy is determined by the more serious offense conspired to under A.R.S. Section 13-1003(d).

During closing arguments, the prosecutor stated that although the defense does not have the burden to produce evidence, if defense counsel had something he thought was important to consider, a subpoenae could have been issued. Defendant claims that this comment improperly points to his failure to present evidence. The prosecutor was referring to people who could have been subpoenaed. That means people other than the defendant. The comment did not draw attention to defendant's silence.

Volume 104

State v. Reynolds
104 Ariz. Adv. Rep. 6, January 7, 1992 (S.Ct.)

Defendant pled guilty to attempted sale of narcotic drugs and was placed on five years probation. As a term of his probation, he did 297 days in a residential rehabilitation program. After a later probation violation and revocation, defendant was sentenced to prison and denied credit for the time spent in the rehab program. The Court of Appeals granted the defendant credit for time spent in a residential drug treatment program. The Supreme Court reverses, finding that custody time under A.R.S. 13-709(b) is limited to actual incarceration in a prison or a jail. The Supreme Court finds that the legislature intended that only certain kinds of restraints on freedom qualify for credit under 13-709(b). [Presented on appeal by Stephen R. Collins, MCPD.]

State v. Rowland
104 Ariz. Adv. Rep. 39, January 21, 1992 (Div. 2)

Defendant was involved in a traffic accident involving one fatality and several serious injuries. The police advised defendant of his Miranda rights and administered field sobriety tests. Defendant declined medical treatment, but police transported him to the hospital without his consent. Defendant was read the implied consent affidavit and a blood sample was taken. Defendant moved to suppress the blood/alcohol content reading because the police had not actually placed the defendant under arrest and he was released that night without being formally charged. A person is under arrest if a reasonable person would believe that, under the circumstances, he was not free to leave. The defendant was handcuffed, given his Miranda warnings several times, put in a police car and taken to the hospital without his consent. The test of whether one is under arrest is objective rather than subjective, and a police officer's subjective intent is not a controlling factor. A reasonable person in this circumstance would believe that he/she was under arrest. The trial court erred when it concluded that defendant was not under arrest. Therefore, the court's order suppressing the blood/alcohol content results is vacated.

MARCH JURY TRIALS

January 27

Donna L. Elm: Client charged with child molestation (8 counts). Trial before Judge Hotham. Defendant found not guilty on all counts. Prosecutor L. Reckart.

January 29

Christine M. Funckes: Client charged with possession of narcotic drugs. Trial before Judge Galati. Defendant found not guilty. Prosecutor A. Garriott.

January 30

Daniel G. Sheperd: Client charged with child molestation. Trial before Judge Gottsfield. Defendant found guilty. Prosecutor J. Berstein.

February 05

Daniel G. Sheperd: Client charged with failure to file income tax. Trial before Judge Noyes. Defendant found guilty. Prosecutor M. Morrison.

February 11

Stephen A. Avilla: Client charged with child molestation (13 counts). Trial before Judge Hotham. Defendant found guilty on all counts. Prosecutor V. Imbordino.

February 25

Donna L. Elm: Client charged with attempted possession of narcotic drugs. Trial before Judge Schneider. Defendant found not guilty. Prosecutor L. Markley.

March 02

Dennis M. Farrell: Client charged with sexual assault. Trial before Judge Dougherty ended March 16. Defendant found not guilty. Prosecutor L. Sellers.

Valarie P. Shears: Client charged with theft. Trial before Judge Campbell ended in a mistrial (caused by state's non-disclosure of victim's felony) March 03. Prosecutor R. Nothwehr.

Thomas M. Timmer: Client charged with aggravated DUI and unlawful flight. Trial before Commissioner Bayham-Lesselyong ended March 03. Defendant found guilty. Prosecutor M. Rand.

Gerald A. Williams: Client charged with child molestation. Trial before Judge Howe ended March 05. Defendant found not guilty. Prosecutor J. Heilman.

James A. Wilson: Client charged with possession of marijuana for sale, offer to sell marijuana, attempted possession of narcotic drugs and misconduct involving weapons. Trial before Judge D'Angelo ended March 06. Defendant found guilty on all counts. Prosecutor V. Kratovil.

March 03

Robert C. Corbitt: Client charged with aggravated DUI. Trial before Judge Sheldon ended March 04. Defendant found guilty. Prosecutor K. Mills.

Larry Grant: Client charged with aggravated assault. Trial before Judge Schneider ended with a hung jury March 09. Prosecutor L. Tinsley.

March 04

Mark J. Berardoni: Client charged with aggravated DUI. Trial before Judge Gottsfield ended March 10. Defendant found guilty of lesser included offense of driving with a suspended license. Prosecutor B. Baker.

Donna L. Elm: Client charged with burglary and theft. Trial before Judge Cates. Defendant found not guilty of burglary and guilty of theft. Prosecutor Vernon.

Paul J. Prato: Client charged with three counts trafficking in stolen property. Trial before Judge Dann ended March 11. Defendant found not guilty on two counts; hung jury on one count. Prosecutor S. Heckathorne.

Joseph A. Stazzone: Client charged with kidnapping and robbery with priors. Trial before Judge Hotham ended March 06. Defendant found not guilty of kidnapping; guilty of robbery; and priors were dismissed. Prosecutor J. Kaites.

March 05

Daphne Budge: Client charged with murder. Trial before Judge Ryan. Defendant found guilty. Prosecutor B. Clayton.

Roland J. Steinle: Client charged with possession of marijuana for sale and resisting arrest. Trial before Judge Grounds ended March 11. Defendant found not guilty of possession of marijuana for sale and guilty of resisting arrest. Prosecutor R. Harris.

Gerald A. Williams: Client charged with kidnapping, armed robbery and aggravated assault. Trial before Judge Hotham. Defendant found guilty of kidnapping, guilty of armed robbery and received a judgment of acquittal on aggravated assault charge. Prosecutor R. Puchek.

March 09

Andrew J. DeFusco: Client charged with theft (class 3) and burglary. Trial before Judge Portley ended March 10. Defendant found guilty of theft and burglary charge was dismissed. Prosecutor D. Wolf.

(cont. on pg. 14)

March 11

Mark J. Berardoni: Client charged with possession of narcotic drugs with two priors. Trial before Judge Gottsfield ended March 16. Defendant found guilty. Prosecutor C. Richards.

Tamara D. Brooks: Client charged with aggravated DUI. Trial before Judge Cole ended March 23. Defendant found guilty. Prosecutor M. Spizzirri.

Jerry M. Hernandez: Client charged with criminal trespass with prior. Trial before Judge Sheldon ended March 11. Defendant found not guilty. Prosecutor D. Udall.

Thomas J. Murphy: Client charged with burglary and possession of burglary tools with 14 priors. Trial before Judge Sheldon ended March 16. Defendant found guilty. Prosecutor T. Glow.

Randy F. Saria, Sr.: Client charged with three counts robbery. Trial before Judge Myers ended March 30. Defendant found guilty on one count and guilty of lesser included offense on other two counts. Prosecutor R. Puchek.

James A. Wilson: Client charged with sale of narcotic drugs with two priors. Trial before Judge Seidel ended March 12. Defendant found guilty. Defendant stipulated to 12 years DOC and admitted to one prior in exchange for dismissal of another sale of narcotic drugs charge and dropping of allegation of second prior conviction. Prosecutor S. Canter.

March 12

Jerry M. Hernandez: Client charged with burglary with two priors while on probation. Trial before Judge Katz ended March 18. Defendant found guilty. Prosecutor J. Martinez.

Suzette I. Pintard: Client charged with aggravated DUI. Trial before Commissioner Gerst ended March 17. Defendant found guilty. Prosecutor H. Schwartz.

March 16

Eric G. Crocker: Client charged with aggravated assault. Trial before Judge Barker ended in a mistrial March 16. Prosecutor M. Barry. NOTE: Retried March 17. Defendant found not guilty March 19.

March 17

James P. Cleary: Client charged with attempted sexual assault. Trial before Judge Myers ended March 18. Defendant found guilty. Prosecutor D. Palmer.

Robert W. Doyle: Client charged with aggravated DUI. Trial before Judge Campbell ended March 23. Defendant found not guilty. Prosecutor P. Howe.

March 23

Timothy J. Agan: Client charged with burglary. Trial before Judge Storrs. Defendant found guilty. Prosecutor M. Kemp.

Daniel G. Sheperd: Client charged with armed robbery and aggravated assault. Trial before Judge Seidel ended in a mistrial. Prosecutor J. Charnell.

Roland J. Steinle: Client charged with theft (class 4). Trial before Judge Katz ended March 26. Defendant found not guilty. Prosecutor J. Beatty.

March 24

Elizabeth S. Langford and Wesley E. Peterson: Client charged with 2nd degree burglary and theft with three priors while on parole. Trial before Judge Sheldon ended March 26. Defendant found guilty. Prosecutor J. Hicks.

March 26

Philip S. Vavalides and Andrea L. Kever: Client charged with ten counts child molestation and one count kidnapping. Trial before Judge Gottsfield ended April 03. Defendant found not guilty on nine counts child molestation and one count kidnapping; guilty on one count child molestation. Prosecutor K. Maricle.

March 30

Richard P. Krecker: Client charged with aggravated DUI. Trial before Judge Schwartz ended April 01. Defendant found guilty. Prosecutor J. Duarte. ^

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PERSONNEL PROFILES

Laura Barnes, a sophomore from Kalamazoo College (Michigan), started an internship with our office on April 6th. She will spend five weeks in Pretrial Services, followed by five weeks at our Juvenile Division. Laura is working toward obtaining a Bachelor of Arts Degree by June, 1994.

Frances Dairman will return as a summer aide, starting her employment on April 27th. Frances will work in Trial Group C.

ADIEU TO . . .

Grant Bashore, of Trial Group D, who will be joining the Federal Public Defender's Office on May 1st. ^